

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1094 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MANSUKHBHAI GORDHANBHAI SIDDHPARA(PATEL) & 1 -
Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MC BAROT for Applicant(s) : 1 - 2.MR TEJAS M BAROT for

Applicant(s) : 1 - 2.

MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

MS JAYSHREE C BHATT for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2007

ORAL JUDGMENT

1. By way of this petition under Articles 226 and
227 of the Constitution of India r.w. Section

482 of the Criminal Procedure Code, the petitioners – original accused have prayed for an appropriate order quashing and setting aside the FIR being I CR No. 224 of 2007 registered with Varacha Police Station, Surat.

2. An FIR is filed by the respondent No.2 herein – original complainant being I CR No. 224 of 2007 at Varacha Police Station, Surat on 9.5.2007 for the offence punishable under sections 465, 467, 368, 401 and 114 of Indian Penal Code alleging inter alia that she is the owner of one plot in T.P. Scheme No. 4 being plot No.65, R.S.No.339, admeasuring about 1600 sq fts in Katargam, District Surat and that the petitioner No. 2 was known to Ashok son of the complainant. It is further alleged in the said complaint that some writings were obtained by the petitioner No.2 from Ashok by giving false promises with regard to getting the land on the said land and misusing the same, the signature was obtained on the sale-deed and power of attorney after one and half year back. It is further alleged in the

complaint that before 8 months of filing of the complaint, she came to know that on the basis of power of attorney of her son - Ashok, the petitioner No.2 has sold the said plot by registered sale-deed in favour of the petitioner No.1 herein. It is alleged in the complaint that no such power of attorney has been given in favour of the petitioner No.2 - Prathmesh Dhirubhai Sarasiya and that no such signature and/or thumb impression has been given by her son - Ashok and therefore, it is alleged that the petitioners have committed offence under sections 465, 467, 368, 401 and 114 of Indian Penal Code and therefore, the aforesaid complaint has been filed. Being aggrieved and dissatisfied with the same, the petitioners - original accused Nos.1 and 2 have preferred present petition under Articles 226 and 227 of the Constitution of India r.w. section 482 of the Criminal Procedure Code to quash and set aside the impugned complaint as according to the petitioners, the same is nothing but sheer abuse of process of Court and the same is filed with

malafide intentions.

3. Shri M.C.Barot, learned advocate appearing for the petitioners has vehemently submitted that the impugned complaint has been filed after 8 months of registered sale-deed and in fact on the basis of the registered sale-deed when entry was to be mutated in the record of rights in favour of the petitioner No.1 at that time, objections were invited but the complainant has never objected to the same by raising the objections and/or making grievance with regard to not signing the power of attorney. He has also further submitted that as such, the respondent No.2 – original complainant has filed one R.C.S.No.443 of 2006 in the Court of learned Principal Senior Civil Judge, Surat for declaration and permanent injunction with regard to the land in questions in which it is specifically mentioned by the respondent No.2 herein that her son – Ashok has executed one power of attorney in favour of the petitioner No.2 herein – original accused No.1 and he is

trying to defeat her rights. It is submitted that it is admitted by the respondent No.2 – original complainant with regard to the execution of the power of attorney in favour of the original accused No.1 – Prathmesh Dhirubhai Sarasiya. It is also further submitted by him that even in the public notice given by Ashok – son of the original complainant, it is specifically mentioned that power of attorney has been given to the original accused No.1 – Prathmesh Dhirubhai Sarasiya with respect to the property in question, however, the petitioner No.2 herein – original accused No.1 has not acted as per the mortgaged deed and therefore, the power of attorney is cancelled. Under the circumstances, even as per the Ashok – son of the original complainant, power of attorney was given by him in favour of the original accused No.1 – Prathmesh Dhirubhai Sarasiya and therefore, the averments and allegations in the complaint that no such power of attorney was given by Ashok to the original accused No.1 – Prathmesh Dhirubhai Sarasiya is absolutely false

and the said allegations are made with malafide intentions. Under the circumstances, it is requested to quash and set aside the impugned FIR as it is nothing but sheer abuse of the process of the Court and the same has been filed with malafide intentions to get some more money.

4. On the other hand, learned counsel appearing on behalf of the respondent No.2 – original complainant has submitted that the averments and allegations made in the complaint are prima facie constitute cognizable offence under sections 465, 467, 368, 401 and 114 of Indian Penal Code and therefore, the impugned FIR is not required to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code and the investigation is to be continued.

5. Shri K.T.Dave, learned APP has requested to pass an appropriate order considering the averments and allegations in the complaint as well as supporting documents.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. In the FIR the allegations are that the petitioner No.2 herein – original accused No.1 has obtained some signatures on the blank papers and misused the same. The further allegations are that no power of attorney has been signed by son of the original complainant – Ashok in favour of the original accused No.1 – petitioner No.2 herein and there is no signature and/or thumb impression of her son – Ashok on the power of attorney and therefore, it is alleged that the petitioners have committed offence under sections 465, 467, 368, 401 and 114 of Indian Penal Code. Now, it is required to be noted that the very respondent No.2 herein – original complainant has filed one R.C.S. No. 443 of 2006 in the Court of learned Principal Senior Civil Judge, Surat against the original accused No.1 and also Ashok – son of the original complainant for declaration and permanent injunction and in

the said suit, at paragraph – 2, it is specifically mentioned by the respondent No.2 herein – original complainant that her son has given one power of attorney to Shri Prathmesh Dhirubhai Sarasiya – petitioner No.2 herein and he is trying to dispose of the properties and defeat her rights. Thus, in the aforesaid suit, it is specifically admitted by her with regard to the execution of power of attorney by Ashok in favour of the petitioner No.2 herein – original accused No.1. Not only that but in the public notice given in the newspaper given by Ashok himself on 22.9.2006, it is specifically mentioned by him that the power of attorney has been given to the petitioner No.2 herein, however, as he has not acted as per the mortgage deed therefore, the power of attorney is cancelled. Meaning thereby, the power of attorney was executed by said Ashok in favour of the petitioner No.2 – original accused No.1 therefore, the whole story in the FIR / complaint and the averments and allegations that no such power of attorney has been given by

Ashok i.e. son of the original complainant in favour of the original accused No.1 is absolutely false and contrary to the public notice given by said Ashok. Under the circumstances, it appears that the original complainant has with malafide intentions filed the aforesaid complaint by giving false facts. Under the circumstances, to continue the said criminal proceedings against the petitioners would be abuse of process of Court. It appears that with some oblique reasons and malafide intentions the criminal complaint is filed by the respondent No.2 herein and the petitioner No.2 herein – original accused No.1 is the purchaser who has purchased the plot in question by registered sale-deed and the impugned complaint has been filed after a period of 8 months and when the respondent No.2 was aware of the said transaction, why even the entry in the revenue record was also not objected by the respondent No.2 herein. Under the circumstances, the impugned FIR / complaint is nothing but abuse of process of Court which requires to be

quashed and set aside by this Court in exercise of powers under section 482 of the Criminal Procedure Code. The case on hand squarely falls within the parameters of exercise of powers under section 482 of the Criminal Procedure Code and the impugned complaint / FIR is being absolutely vexatious, is required to be quashed and set aside.

8. For the reasons stated above, petition succeeds. The impugned complaint being I CR No.224 of 2007 registered with Varacha Police Station, Surat is hereby quashed and set aside. Rule is made absolute accordingly.

[M.R.Shah, J.]

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